

BOARD OF ZONING APPEALS

AUGUST 6, 1998

A. ROLL CALL

PRESENT:

Mr. Feigley
Mr. Nice
Mr. Fischer
Mr. Giedd

ABSENT:

Ms. Wallace

OTHERS PRESENT:

John Patton, Code Compliance Officer
Scott Denny, Code Compliance Officer

B. MINUTES

The minutes of the July 2, 1998 meeting were approved as submitted.

C. OLD BUSINESS

None

D. NEW BUSINESS

ZA-7-98. Mark R. Walker, 114 Constance Avenue

John Patton presented the staff report stating that Mr. Mark R. Walker has requested a variance to Sec. 24-237 (a), Yard Regulations, for a newly constructed accessory structure located at 114 Constance Avenue. The property is zoned R-1, Limited Residential, and is further identified as parcel (5-26) on James City County Real Estate Tax Map No. (47-3).

The minimum side yard setback for accessory structures one story tall or less is five feet. Mr. Walker constructed his accessory structure approximately eleven feet from the deck on the house, the nearest point to the dwelling, and 4.16 feet from the property line. This is an encroachment of 9.72 inches. No Certificate of Occupancy has been issued for the structure.

Mr. Walker submitted a building permit application on March 16, 1998. He provided a sketch showing the shed would be 5.5 feet from the property line and 25 feet from the dwelling. Mr. Walker met with John Patton to discuss the requirements for meeting the setbacks and the requirement for a foundation survey. Mr. Walker assured staff that he had staked out the foundation for the accessory structure and knew the exact location of his property line. Mr. Patton explained that prior to a Certificate of Occupancy being issued that an inspector would need to verify that the shed was five or more feet from the property line. The applicant signed an affidavit assuming full responsibility for completion of the proposed work in accordance with the law and all building codes. Based on this discussion, Mr. Patton waived the foundation survey requirement and a building permit was issued on March 31, 1998.

Mr. Walker requested a foundation inspection for April 1, 1998. An inspection was performed that day on the slab but setbacks were not checked, as the building face that would determine the setback was not in place. Mr. Walker requested a framing and final inspection for April 6, 1998. The building inspector was told to verify the location based on the fence line and nearby survey rod. The building was found to be less than five feet from the property line and the framing and final inspections were rejected. Mr. Walker acknowledged the error when he called staff for advice and was told to move the shed. Mr. Walker had the property surveyed on June 6, 1998 and subsequently submitted a variance application.

Staff provided guidance to the applicant and he chose to accept responsibility and proceed on his own. The property has ample room for an accessory structure of this size and a strict application of the ordinance does not place an undue hardship on the property owner. In staff's opinion, granting a variance in this case would be a special privilege and a convenience for the applicant and cannot support this application.

Mr. Feigley asked why staff requested a foundation survey.

Mr. Patton stated that a foundation survey is required in the County when a building is three-feet or less from a setback. A pin location was shown on a GIS rendering of the applicant's property, which led staff to request the survey.

Mr. Feigley noted that the variance application stated that the foundation was approved. He asked how an inspector could measure a setback when the building face was not yet in place.

Mr. Giedd stated that an inspector could look at a plan to see what type of siding is to be used and measure accordingly given this information. He added that the slab had already been poured at the time of the first inspection.

Mr. Patton stated that an inspection is typically done to check depth prior to pouring the slab.

Mr. Nice stated that no building face could be checked at the time of survey. In cases where staff knows the measurement will be close for setbacks, using the depth of the building face as a reason for not measuring is a poor excuse. He applauded staff for waiving the foundation survey for an accessory structure but noted that doing so brings cases like this before the BZA.

Mr. Feigley opened the public hearing.

Mark R. Walker stated that considerable expense had gone into the shed to make it look identical to the house. A concrete slab was poured in order to make the shed more appealing. An honest error was made but was in no way intentional. The inspection obtained prior to pouring the slab was approved. Moving the shed at this point would involve considerable expense.

Mr. Nice asked the applicant whether or not he had spoken with Mr. Patton prior to pouring the slab for the shed.

Mr. Walker responded that he had spoken with Mr. Patton and applied for all the proper permits and inspections before pouring the slab. He reiterated that he had made every effort to comply and made an honest mistake.

Mr. Feigley asked the applicant why he signed an affidavit that he would accept responsibility for meeting the ordinance requirements.

Mr. Walker stated that he signed the affidavit because he didn't believe that he would have any problems given the careful manner in which he had measured for the slab.

Mr. Feigley asked whether or not the applicant would have had to tear up a section of his walkway in order to comply with the setback requirements.

Mr. Giedd stated that the inspection was performed with the hole having been dug and rebar in place. He added that it appeared that the County prior to pouring had issued a building permit.

Mr. Nice asked if any of the adjacent property owners had complained about the shed's location.

Mr. Walker replied that none of his neighbors had anything negative to say about the shed. He added that many had stopped by to compliment him on the job he had done.

Mr. Feigley closed the public hearing.

Mr. Giedd stated that the applicant had made an honest mistake. The encroachment does not have an adverse effect on the surrounding properties in the neighborhood. He added that there would be little gained from requiring the applicant to move the shed and would favor granting a variance in this case.

Mr. Feigley stated that staff had done everything that the BZA has been asking staff to do in this case. The applicant signed an affidavit accepting responsibility for his actions. It is not the duty of the inspector to check the setbacks. Because a foundation survey was waived by staff given the applicant's promise to fix any problems, the setbacks were never checked. The applicant solely created the hardship in this case.

Mr. Nice stated that the applicant acted in good faith and certainly did not violate any regulations intentionally. He applauded County staff for being flexible in waiving the survey requirement. It should not be the practice of the BZA to penalize citizens for making honest mistakes and would support granting a variance in this case.

Mr. Giedd stated that if an applicant came before the BZA prior to doing work in a case such as this one the BZA would likely not allow a variance. It is easier to ask forgiveness than it is to ask permission.

Mr. Fisher stated that he was not in favor of granting a variance in this case before the meeting started but had changed his mind after listening to the discussion of the case. The applicant called for an inspection before pouring and the setbacks were never checked because the building face was not in place. The building face normally changes the measurement by only a few inches and the shed is encroaching the setback by nearly ten inches.

Mr. Walker responded by stating that he had measured from the corner of his garage and not from the property line.

Mr. Feigley stated that the measurement is made from the pin and not from the fence line.

Mr. Nice made a motion to grant a variance to allow a sideyard setback of 4.16 feet for the existing accessory structure as it is shown on the survey plat dated June 9, 1998 by Edloe Morecock.

Mr. Giedd seconded the motion.

Mr. Feigley stated that he would likely vote in favor of granting a variance in this case but doing so goes against all his principles for having a BZA. The applicant was told that he should get professional assistance. The County can't hold the hand of every applicant that comes in for help.

The hardship in this case was brought on by the applicant's actions and financial hardship is not grounds for granting a variance. The BZA can't allow emotional arguments to become the rule.

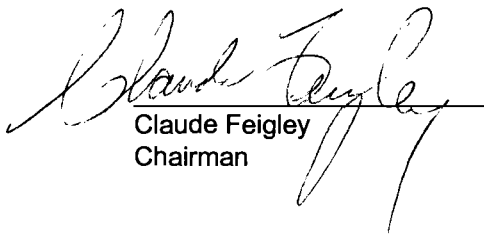
The variance was granted by a unanimous vote (4-0).

E. MATTERS OF SPECIAL PRIVILEGE

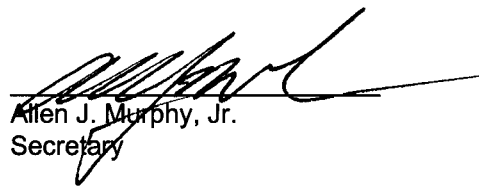
None

F. ADJOURNMENT

The meeting was adjourned at 8:45 p.m.



Claude Feigley
Chairman



Allen J. Murphy, Jr.
Secretary